

1 SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR
2 SENATE BILL 415

3 **48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

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10 AN ACT

11 RELATING TO PROCUREMENT; AMENDING THE PROCUREMENT CODE TO
12 PROVIDE FOR CONSTRUCTION MANAGER AT RISK CONTRACTS IN THE
13 CONSTRUCTION OF EDUCATIONAL FACILITIES; ENACTING THE
14 EDUCATIONAL FACILITY CONSTRUCTION MANAGER AT RISK ACT;
15 PROVIDING PROCEDURES FOR SELECTING A CONSTRUCTION MANAGER AT
16 RISK; DECLARING AN EMERGENCY.

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

19 Section 1. Section 13-1-102 NMSA 1978 (being Laws 1984,
20 Chapter 65, Section 75) is amended to read:

21 "13-1-102. COMPETITIVE SEALED BIDS REQUIRED.--All
22 procurement shall be achieved by competitive sealed bid
23 pursuant to Sections [~~76 through 83 of the Procurement Code~~]
24 13-1-103 through 13-1-110 NMSA 1978, except procurement
25 achieved pursuant to the following sections of the Procurement
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SCORC/SB 415

1 Code:

2 A. Sections [~~84 through 97~~] 13-1-111 through
3 13-1-122 NMSA 1978, competitive sealed proposals;

4 B. Section [~~98~~] 13-1-125 NMSA 1978, small
5 purchases;

6 C. Section [~~99~~] 13-1-126 NMSA 1978, sole source
7 procurement;

8 D. Section [~~100~~] 13-1-127 NMSA 1978, emergency
9 procurements;

10 E. Section [~~102~~] 13-1-129 NMSA 1978, existing
11 contracts; [~~and~~]

12 F. Section [~~103~~] 13-1-130 NMSA 1978, purchases from
13 antipoverty program businesses; and

14 G. the Educational Facility Construction Manager At
15 Risk Act."

16 Section 2. Section 13-1-111 NMSA 1978 (being Laws 1984,
17 Chapter 65, Section 84, as amended) is amended to read:

18 "13-1-111. COMPETITIVE SEALED PROPOSALS--CONDITIONS FOR
19 USE.--

20 A. Except as provided in Subsection G of Section
21 13-1-119.1 NMSA 1978, when a state agency or a local public
22 body is procuring professional services or a design and build
23 project delivery system, or when the state purchasing agent, a
24 central purchasing office or a designee of either officer makes
25 a written determination that the use of competitive sealed

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1 bidding for items of tangible personal property or services is
 2 either not practicable or not advantageous to the state agency
 3 or a local public body, a procurement shall be effected by
 4 competitive sealed proposals.

5 B. Competitive sealed proposals may also be used
 6 for contracts for construction and facility maintenance,
 7 service and repairs.

8 C. Competitive sealed proposals may also be used
 9 for construction manager at risk contracts if a three-step
 10 selection procedure is used pursuant to the Educational
 11 Facility Construction Manager At Risk Act.

12 [~~E.~~] D. Competitive qualifications-based proposals
 13 shall be used for procurement of professional services of
 14 architects, engineers, landscape architects, construction
 15 managers and surveyors who submit proposals pursuant to
 16 Sections 13-1-120 through 13-1-124 NMSA 1978.

17 [~~D.~~] E. Competitive sealed proposals shall also be
 18 used for contracts for the design and installation of measures
 19 the primary purpose of which is to conserve natural resources,
 20 including guaranteed utility savings contracts entered into
 21 pursuant to the Public Facility Energy Efficiency and Water
 22 Conservation Act."

23 Section 3. A new section of the Procurement Code, Section
 24 13-1-124.1 NMSA 1978, is enacted to read:

25 "13-1-124.1. [NEW MATERIAL] SHORT TITLE.--Sections
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1 13-1-124.1 through 13-1-124.5 NMSA 1978 may be cited as the
2 "Educational Facility Construction Manager At Risk Act".

3 Section 4. A new section of the Procurement Code, Section
4 13-1-124.2 NMSA 1978, is enacted to read:

5 "13-1-124.2. [NEW MATERIAL] APPLICABILITY.--The
6 provisions of the Educational Facility Construction Manager At
7 Risk Act apply to contracts for the construction of educational
8 facilities if the governing body chooses, pursuant to the
9 provisions of that act, to use the services of a construction
10 manager at risk."

11 Section 5. A new section of the Procurement Code, Section
12 13-1-124.3 NMSA 1978, is enacted to read:

13 "13-1-124.3. [NEW MATERIAL] DEFINITIONS.--As used in the
14 Educational Facility Construction Manager At Risk Act:

15 A. "construction manager at risk" means a person
16 who, pursuant to a contract with a governing body, provides the
17 preconstruction services and construction management required
18 in a construction manager at risk delivery method;

19 B. "construction manager at risk delivery method"
20 means a construction method for an educational facility wherein
21 a construction manager at risk provides a range of
22 preconstruction services and construction management, including
23 cost estimation and consultation regarding the design of the
24 building project, preparation and coordination of bid packages,
25 scheduling, cost control, value engineering and, while acting

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1 as the general contractor during construction, detailing the
2 trade contractor scope of work, holding the trade contracts and
3 other subcontracts, prequalifying and evaluating trade
4 contractors and subcontractors and providing management and
5 construction services, all at a guaranteed maximum price for
6 which the construction manager at risk is financially
7 responsible;

8 C. "educational facility" means a public school,
9 including a locally chartered or state-chartered charter school
10 or a facility of a state educational institution listed in
11 Section 6-17-1.1 NMSA 1978;

12 D. "governing body" means:

13 (1) the public school facilities authority if
14 the authority is the using agency that requires the
15 construction of an educational facility;

16 (2) a local school board if the board is the
17 using agency that requires the construction of an educational
18 facility;

19 (3) the governing body of a charter school if
20 the governing body is the using agency that requires the
21 construction of an educational facility; or

22 (4) the governing body of a state educational
23 institution if the governing body is the using agency that
24 requires the construction of an educational facility; and

25 E. "guaranteed maximum price" means the maximum

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1 amount to be paid by the governing body for the construction of
2 the educational facility, including the cost of the work, the
3 general conditions and the fees charged by the construction
4 manager at risk."

5 Section 6. A new section of the Procurement Code, Section
6 13-1-124.4 NMSA 1978, is enacted to read:

7 "13-1-124.4. [NEW MATERIAL] CONSTRUCTION MANAGER AT RISK
8 DELIVERY METHOD AUTHORIZED--MULTIPHASE SELECTION PROCEDURE.--

9 A. A construction manager at risk delivery method
10 may be used when a governing body determines that it is in its
11 interest to use that method on a specific educational facility
12 construction project, provided that the construction manager at
13 risk shall be selected pursuant to the provisions of this
14 section.

15 B. The governing body shall form a selection
16 committee of at least three members with at least one member
17 being an architect or engineer. The selection committee shall
18 develop an evaluation process, including a multiphase procedure
19 consisting of two or three steps. A two-step procedure may be
20 used when the total amount of money available for the project
21 is less than five hundred thousand dollars (\$500,000) and shall
22 include a request for qualifications and an interview. A
23 three-step procedure shall consist of a request for
24 qualifications, a request for proposals and an interview.

25 C. A request for qualifications shall be published

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1 in accordance with Section 13-1-104 NMSA 1978 and shall include
 2 at a minimum the following:

3 (1) a statement of the minimum qualifications
 4 for the construction manager at risk, including the
 5 requirements for:

6 (a) a contractor's license for the type
 7 of work to be performed, issued pursuant to the Construction
 8 Industries Licensing Act;

9 (b) registration pursuant to Section
 10 13-4-13.1 NMSA 1978; and

11 (c) a minimum bond capacity;

12 (2) a statement of the scope of work to be
 13 performed, including:

14 (a) the location of the project and the
 15 total amount of money available for the project;

16 (b) a proposed schedule, including a
 17 deadline for submission of the statements of qualification;

18 (c) specific project requirements and
 19 deliverables;

20 (d) the composition of the selection
 21 committee;

22 (e) a description of the process the
 23 selection committee shall use to evaluate qualifications;

24 (f) a proposed contract; and

25 (g) a detailed statement of the

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1 relationships and obligations of all parties, including the
2 construction manager at risk, agents of the governing body,
3 such as an architect or engineer, and the governing body;

4 (3) a request for verification of the maximum
5 allowable construction cost; and

6 (4) a request for a proposal bond as required
7 by Section 13-1-146 NMSA 1978.

8 D. The selection committee shall evaluate the
9 statements of qualifications submitted and determine the
10 offerors that qualify for the construction manager at risk. If
11 the selection committee has chosen a three-step procedure, the
12 committee shall issue a request for proposals to the offerors
13 that qualify.

14 E. If the selection committee has chosen a two-step
15 procedure, the committee shall rank the offerors that qualify
16 based upon the statements of qualification and interview up to
17 three of the highest-ranked offerors.

18 F. In a three-step procedure, the selection
19 committee shall issue a request for proposals and evaluate the
20 proposals pursuant to Sections 13-1-112 through 13-1-117 NMSA
21 1978 except that:

22 (1) the request for proposals shall be sent
23 only to those determined to be qualified pursuant to Subsection
24 D of this section;

25 (2) the selection committee shall evaluate the

1 proposals and conduct interviews with up to three of the
2 highest-ranked offerors instead of negotiating with responsible
3 offerors found to be reasonably likely to be selected; and

4 (3) pursuant to Subsection G of this section,
5 the contract award may be made after the interviews.

6 G. After conducting interviews with the highest-
7 ranked offerors and after considering the factors listed in
8 Subsection H of this section, the selection committee shall
9 recommend to the governing body the offeror that will be most
10 advantageous to the governing body. Should the governing body
11 or designee be unable to negotiate a satisfactory contract with
12 the offeror considered to be the most qualified at a price
13 determined to be fair and reasonable, negotiations with that
14 offeror shall be formally terminated. The governing body or
15 designee shall then undertake negotiations with the second most
16 qualified offeror. Failing accord with the second most
17 qualified offeror, the governing body or designee shall
18 formally terminate negotiations with the offeror. The
19 governing body or designee shall then undertake negotiations
20 with the third most qualified offeror. Should the governing
21 body or designee be unable to negotiate a contract with any of
22 the offerors selected by the committee, additional offerors
23 shall be ranked in order of their qualifications and the
24 governing body or designee shall continue negotiations in
25 accordance with this section until a contract is signed with a

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1 qualified offeror or the procurement process is terminated and
2 a new request for proposals is initiated.

3 H. In evaluating and ranking statements of
4 qualifications, proposals and results of interviews, and in the
5 final recommendation of a construction manager at risk, the
6 selection committee shall consider:

7 (1) the offeror's experience with construction
8 of similar types of projects;

9 (2) the qualifications and experience of the
10 offeror's personnel and consultants and the role of each in the
11 project;

12 (3) the plan for management actions to be
13 undertaken on the project, including services to be rendered in
14 connection with safety and the safety plan for the project;

15 (4) the offeror's experience with the
16 construction manager at risk method; and

17 (5) all other selection criteria, as stated in
18 the request for qualifications and the request for proposals.

19 I. Nothing in this section precludes the selection
20 committee from recommending the termination of the selection
21 procedure pursuant to Section 13-1-131 NMSA 1978 and repeating
22 the selection process pursuant to this section. Any material
23 received by the selection committee in response to a
24 solicitation that is terminated shall not be disclosed so as to
25 be available to competing offerors.

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1 J. After a contract is awarded, the selection
 2 committee shall make the names of all offerors and the names of
 3 all offerors selected for interview available for public
 4 inspection along with the selection committee's final ranking
 5 and evaluation scores. Offerors who were interviewed but not
 6 selected for contract award shall be notified in writing within
 7 fifteen days of the award."

8 Section 7. A new section of the Procurement Code, Section
 9 13-1-124.5 NMSA 1978, is enacted to read:

10 "13-1-124.5. [NEW MATERIAL] RESPONSIBILITIES OF
 11 CONSTRUCTION MANAGER AT RISK FOLLOWING AWARD OF PROJECT.--

12 A. The contract with the construction manager at
 13 risk shall specify:

14 (1) the guaranteed maximum price; and

15 (2) the percentage of the guaranteed price
 16 that the construction manager at risk will perform with its own
 17 work force.

18 B. The construction manager at risk, in cooperation
 19 with the governing body, shall seek to develop subcontractor
 20 interest in the project and shall furnish to the governing body
 21 and any architect or engineer representing the governing body a
 22 list of subcontractors who state in writing that they are a
 23 responsible bidder or a responsible offeror, including
 24 suppliers who are to furnish materials or equipment fabricated
 25 to a special design and from whom proposals or bids will be

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1 requested for each principal portion of the project. The
2 governing body and its architect or engineer shall promptly
3 reply in writing to the construction manager at risk if the
4 governing body, architect or engineer knows of any objection to
5 a listed subcontractor or supplier, provided that the receipt
6 of the list shall not require the governing body, architect or
7 engineer to investigate the qualifications of proposed
8 subcontractors or suppliers, nor shall it waive the right of
9 the governing body, architect or engineer later to object to or
10 reject any proposed subcontractor or supplier.

11 C. The construction manager at risk shall:

- 12 (1) conduct pre-bid or pre-proposal meetings;
13 (2) advise the governing body about bidding or
14 proposals;
15 (3) enter into contracts; and
16 (4) assist the governing body in evaluating
17 submissions by responsible bidders and offerors."

18 Section 8. A new section of Chapter 13, Article 4 NMSA
19 1978 is enacted to read:

20 "[NEW MATERIAL] DEFINITIONS--CONSTRUCTION CONTRACT--
21 CONTRACTOR.--As used in Chapter 13, Article 4 NMSA 1978:

22 A. "contract" or "construction contract" includes a
23 construction manager at risk contract entered into pursuant to
24 the Educational Facility Construction Manager At Risk Act; and

25 B. "contractor" includes a construction manager at

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1 risk selected pursuant to the Educational Facility Construction
2 Manager At Risk Act."

3 Section 9. Section 13-1-146 NMSA 1978 (being Laws 1984,
4 Chapter 65, Section 119) is amended to read:

5 "13-1-146. REQUIREMENT FOR BID SECURITY.--Bid security
6 shall be required of bidders or offerors for construction
7 contracts [~~procured by competitive sealed bid~~] when the price
8 is estimated by the procurement officer to exceed twenty-five
9 thousand dollars (\$25,000). Bid security in an amount equal to
10 at least five percent of the amount of the bid shall be a bond
11 provided by a surety company authorized to do business in this
12 state, or the equivalent in cash, or otherwise supplied in a
13 form satisfactory to the state agency or a local public body."

14 Section 10. EMERGENCY.--It is necessary for the public
15 peace, health and safety that this act take effect immediately.

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